Supreme Court, U.S.
FILED
FEB 24 1989
JOSEPH F. SPANIOL, JR.
CLERK

88-1405

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1988

BILLY GUNN BROWN, PETITIONER

vs

STATE OF MISSISSIPPI, RESPONDENT

ON WRIT OF CERTIORARI FROM THE SUPREME COURT OF THE STATE OF MISSISSIPPI TO THE SUPREME COURT OF THE UNITED STATES

Petition for Writ of Certiorari

JOHN ARTHUR EAVES
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42 pp

QUESTIONS PRESENTED

I. Did the State of Mississippi violate Petitioner's rights under Article I, Section 10 of the Constitution of the United States by applying a new statute which took effect in July 1986 to an indictment returned against Petitioner in May 1986?

II. Did the State of Mississippi violate Petitioner's Fourth and Fourteenth Amendment rights under the Constitution of the United States by searching his home using a search warrant that was defective, therefore, void?

III. Did the State of Mississippi violate Petitioner's right to a fair trial guaranteed under the Sixth and Fourteenth Amendments of the Constitution of the United States by trying Petitioner on multiple charges in a single trial; introducing into evidence items seized from Petitioner's home in violation of his Fourth and Fourteenth Amendment rights

and by introducing into evidence at Petitioner's trial inflammatory and irrelevant evidence, to-wit, 80 Playboy magazines?

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OPINION BELOW

The opinion of the Supreme Court of the State of Mississippi, decided on November 9, 1988, is attached as Appendix A. The Supreme Court of the State of Mississippi denied the Petition for Rehearing on December 28, 1988 without a written opinion.

JURISDICTION

The Judgment of the Supreme Court of the State of Mississippi was entered on November 9, 1988 from a conviction of the Petitioner in the Circuit Court of Lauderdale County, Mississippi. A timely Petition for Rehearing was denied on December 28, 1988, and this Petition for Writ of Certiorari was filed within sixty days of that date. This Court has jurisdiction pursuant to Section 1257(3) of Title 28 of the United States Code and the Constitution of the United States of America.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Fourth, Sixth and Fourteenth Amendments and also Article I, Section 10 of the Constitution of the United States of America. Copies of these are attached hereto as Appendices B, C, D, and E.

STATEMENT OF THE CASE

Billy Gunn Brown, Petitioner was indicted on four different charges which allegedly occurred over a six month period from March 7, 1985 until August 31, 1985. (R. 3-6) The indictment was returned on May 9, 1986. Count I of the indictment charged Petitioner with the sexual battery of a minor child, Melissa Dawn Barbee; Count II charged Petitioner with touching and handling a minor child, Melissa Dawn Barbee; Count III charged Petitioner with contributing to the delinquency of a minor, Melissa Dawn Barbee, (R. 3-5), Count IV charged Petitioner with

contributing to the delinquency of a minor, Geneviene Clay. (R. 5-6)

Testimony during a jury trial held in the Circuit Court of Lauderdale County, on August 25, 1986 revealed that Petitioner is fifty-four years old and a disabled veteran. As a result of a spinal injury in Korea, Petitioner became paraplegic causing him to lose all use and movement of his body from the belt line down. (R. 711,712)

Petitioner was found guilty on all four counts of the indictment and was sentenced to twelve (12) years in the Mississippi Department of Corrections on Count I, fined $1,000.00 on Count II, $500.00 on Count III, and $500.00 on Count IV.

The Petitioner was wrongfully convicted and was denied certain constitutional rights guaranteed to him under the Constitution of the State of Mississippi and the Constitution of the United States of America.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

A. THE MULTI-COUNT INDICTMENT RETURNED AGAINST PETITIONER WAS IMPROPER BECAUSE IT WAS RETURNED BEFORE THE STATUTE ALLOWING SUCH INDICTMENTS TOOK EFFECT.

The four count indictment was returned against Petitioner on May 9, 1986. In the 1986 Legislative session of the Mississippi Legislature a new law was passed which made it legal for two or more offenses to be charged in a single indictment. MISS. CODE ANN. §99-7-2. However, this law was not effective until July 1, 1986, some two months after Petitioner's indictment.

The United States Constitution, Article I, Section 10 states "No state shall... pass any Billy of Attainer, ex post facto law..." (Emphasis added). MISS. CODE ANN. § 99-7-2 is not an ex post facto law because it explicitly stated that it would take effect on July 1, 1986. However, the trial court was in effect making MISS. CODE ANN. § 99-7-2

ex post facto by giving it retroactive effect to Petitioner's indictment.

On July 30, 1986, Petitioner filed a Demurrer to the Indictment wherein Petitioner asked to have the indictment quashed, one of the grounds being the issue of multiple counts. Petitioner's Demurrer to the Indictment was overruled by the trial court.

On opening day of trial, Petitioner again raised the issue by attempting to have the State elect which count of the indictment the State would proceed with and cited as authority Burgess v. State, 33 So. 499 (Miss. 1903). The following discussion was held on the issue.

> By the Court:
> Well, I take it, at this time you're electing to proceed on all the counts in the indictment.
>
> By Mr. Wright:
> That's correct your Honor.
>
> By the Court:
> All right. I'm going to rule that he will be trying all the counts of the indictment at this time.

By Mr. Eaves:
Your Honor, this is the first time that the Court has ruled that. Is that correct?

By the Court:
I don't know, but I have ruled it now.

By Mr. Eaves:
All right. Now -- and the Court is aware of the fact that this law that he's attempting to apply did not go into effect until July 1, 1986.

By the Court:
I was thinking. That's the reason I asked him when was the Legislature -- the law passed. The indictment was returned on May 9, 1986.

By Mr. Eaves:
Yes, sir. But, the law went into effect July 1, 1986.

By the Court:
Well, call your witnesses. I intend to try this case if I can. If I'm in error, I will apologize to you and your client.

(R. 155,156)

It is clear the trial court was aware that there was a problem with a law taking effect on July 1, 1986 but applying to an indictment returned on May 9, 1986. Petitioner urges this Court to find that this was a violation of Petitioner's rights

protected by Article I, Section 10 of the United States Constitution.

By trying Petitioner on multiple charges, there was no way for Petitioner to receive a fair trial. Trying the charge of sexual battery separately as it should have been, would have excluded a lot of extraneous evidence that was irrelevant to the sexual battery charge and that had a prejudicial effect on Petitioner's right to a fair trial which is a violation of Petitioner's Sixth Amendment rights under the United States Constitution.

B. PHYSICAL EVIDENCE UNCONSTITUTIONALLY OBTAINED BY AN INVALID SEARCH WARRANT SHOULD HAVE BEEN SUPPRESSED AND IT WAS REVERSIBLE ERROR TO ADMIT SAID EVIDENCE AT THE PETITIONER'S TRIAL.

Before trial, Petitioner filed a Motion to Suppress the evidence obtained by an invalid search warrant. (R. 75) At a hearing on the Motion to Suppress held on August 4,

1986, testimony was heard and the Motion was denied.

Three search warrants were issued on three separate occasions for the search of Petitioner's home. The warrants were dated October 15, 1985, March 14, 1986, and March 25, 1986.

Regarding the warrant dated October 17, 1985, the officer making the return could not verify that the return was made and the warrant bore no sworn return (R. 89, 130) With an improper return, any evidence seized was subject to suppression.

The second warrant dated March 14, 1986 was invalid because of lack of probable cause. The affidavit used for the issuance of the first warrant was again used for issuance of the second.

The affidavit for the first warrant is contained in the record at pages 91 through 95. The affidavit for the second warrant is contained in the record at pages 104 through

108. Petitioner would submit that since the second warrant was based on the probable cause existing at the time of the first search, no new probable cause existed which would have justified the issuance of a second warrant. The exhibit to the second warrant's affidavit was an unsworn statement of one of the State's witnesses at trial. There was no testimony that the witness appeared before the issuing magistrate.

The third search warrant was not valid because there was no sworn return of the items seized and it was not signed. (R. 125)

Based upon these facts, none of the evidence seized in any of the three searches should have been allowed into evidence. The State should not have been allowed to enter into evidence two unsworn and one unsigned returns.

A sworn return is to protect the Petitioner' rights. This protection was not afforded Petitioner. This is a violation of

Petitioner's Fourth Amendment rights under the United States Constitution. Petitioner was not offered the full Constitutional protection of a sworn return on the first and third warrants and the second search was conducted on a warrant issued without probable cause.

Petitioner urges this Court to hold that the physical evidence obtained by the three warrants should be suppressed. Since some of the physical evidence was used at trial, Petitioner requests this Court to reverse the convictions holding that the use of the evidence violated Petitioner's Fourth, Sixth, and Fourteenth Amendment rights as guaranteed under the United States Constitution.

C. PETITIONER WAS DENIED HIS RIGHT TO A FAIR AND IMPARTIAL TRIAL DUE TO THE INTRODUCTION OF IMMATERIAL IRRELEVANT AND HIGHLY PREJUDICIAL EVIDENCE.

There was testimony by two of the State's witnesses that they were shown a

Playboy magazine by Petitioner. The witnesses could not identify any one particular magazine, however, the trial court allowed eighty (80) Playboy magazines to be introduced into evidence. There is no measure of the prejudicial impact the eighty (80) Playboy magazines had on the jury. The only reason for the introduction of those magazines was to inflame the jury.

A witness for the State was questioned about some photographs that he took to the witness stand. When asked why he had the photos, the witness said for "possible identification of other victims." Petitioner made a Motion for a mistrial due to the prejudicial effect the statement that there may be more "possible victims" had on the jury. The Motion was overruled. A second witness of the State made mention of more "possible victims." Again Petitioner objected to the reference to other victims and moved for a mistrial; the motion was

again overruled.

Further testimony of a State's witness implicated Petitioner in a sale of marijuana offense even though no such offense was charged. (R. 588) Again, Petitioner moved for mistrial and the motion was again overruled. The court instructed the jury to disregard this information, however, the damage had already been done. This testimony was of such a prejudicial nature that Petitioner's right to a fair and impartial trial was lost.

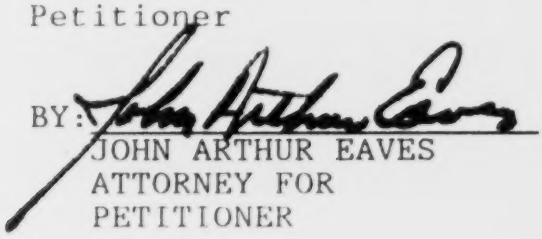
CONCLUSION

The combination of the multiple count indictment, trying all counts in a single trial, introduction of evidence obtained through an improper search, and then the introduction of highly prejudicial testimony not related to the charges, all rendered Petitioner's right to a fair and impartial trial impossible. Any of these errors above

should be enough to reverse Petitioner's conviction, but all of them combined should certainly be grounds for the granting of Petitioner's Writ of Certiorari.

Respectfully submitted,

BILLY GUNN BROWN,
Petitioner

BY: 
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CERTIFICATE OF SERVICE

I, John Arthur Eaves, Attorney for Petitioner, do hereby certify that I have this day mailed three (3) true and correct copies of the foregoing Petitioner for Writ of Certiorari tp Honorable Wayne Snuggs, Assistant Attorney General, P. O. Box 220, Jackson, Mississippi 39205.

This the 22 day of February, 1989.

JOHN ARTHUR EAVES
ATTORNEY AT LAW

APPENDIX

WRITTEN OPINION OF THE SUPREME COURT OF MISSISSIPPI
EXHIBIT "A"

AMENDMENT IV OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA
EXHIBIT "B"

AMENDMENT VI OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA
EXHIBIT "C"

AMENDMENT XIV OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA
EXHIBIT "D"

ARTICLE I, SECTION 10 OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA
EXHIBIT "E"

IN THE SUPREME COURT OF MISSISSIPPI

NO. 58,009

BILLY GUNN BROWN

V.

STATE OF MISSISSIPPI

BEFORE DAN LEE, P.J., ROBERTSON AND GRIFFIN, JJ. GRIFFIN, JUSTICE, FOR THE COURT:

I.

Billy Gunn Brown was indicted by the Lauderdale County Grand Jury on May 9, 1986, with four different charges arising from occurrences from March 7, 1985, through August 31, 1985. Count I charged Brown with sexual battery of a minor child, M.B., § 97-3-95, Miss. Code Ann. (Supp. 1986); Count II with touching and handling a minor child, M.B., §97-5-23, Miss. Code Ann. (Supp. 1986); Count III with contributing to the delinquency of a minor, M.B., § 43-23-25, Miss. Code Ann. (Supp. 1986); and Count IV with contributing to the delinquency of a minor, G.C., § 43-23-25, Miss. Code Ann.

(Supp. 1986).

A jury trial was held in the Circuit Court of Lauderdale County, Honorable Lester F. Williamson presiding, on August 25, 1986. Billy Gunn Brown was found guilty of all four charges.

The court sentenced Brown to 12 years in the Miss. Dept. of Corrections on Count I. He was fined $1,000 on Count II, $500 on Count III, and $500 on Count IV. From this verdict and sentence, Brown appeals. The appellant assigns as error the following:

> 1. The court erred in overruling appellant's motion to quash the multiple count indictment and for allowing the State to try the appellant on all counts in a single trial.
> 2. The court erred in admitting into evidence certain physical evidence that was unconstitutionally obtained and that should have been suppressed.
> 3. The court erred in allowing introduction of immaterial, irrelevant, and highly prejudicial evidence that when taken as a whole denied appellant his right to a fair and impartial trial.

We find appellant's assigned errors without merit and affirm his conviction and

sentence.

II.

Billy Gunn Brown was born May 21, 1932. He is a disabled veteran. Due to a spinal injury, sustained while serving in the army during the Korean conflict, he lost all use and movement of his body from the waist down. Brown was a Justice Court Judge of District 1, Lauderdale County, from January 1976, until August 1984.

M.B. is the daughter, by a prior marriage, of Brown's ex-wife. Her mother and Brown divorced in August, 1984. M.B. began living with Brown in March 1985 in order to attend Northwest school in Meridian. She was thirteen (13) years old at the time the offenses were committed.

G. C. was on of M.B.'s best friends. She began spending nights at Brown's house in march, 1985. She was fourteen (14) at this time.

After march, 1985, Brown started showing

the two girls pictures of nude women. He offered them $75.00 each to pose for pictures. The girls posed nude, and in various positions. They were also shown Playboy magazines.

Brown then began having parties for the girls. The girls were given alcoholic drinks, marijuana, and other drugs. They were then taken to Brown's bedroom, where Brown undressed them and performed various sexual acts with them. These encounters started in April, 1985 and continued until August, 1985. In addition to these acts, Brown had the girls use various methods to stimulate him; and they burned their initials into his sides. He showed the girls movies depicting lesbian acts and had them engage in lesbian relations at least once.

III.

DID THE TRIAL COURT ERR IN OVERRULING BROWN'S MOTION TO QUASH THE MULTIPLE COUNT INDICTMENT?

Appellant, Brown, was charged in a

multi-count indictment on May 9, 1986. At that time there was no statute in effect allowing this type of indictment. Appellant filed a demurrer to the indictment, citing Stinson v. State, 443 So. 2d 869 (Miss. 1983); Bennett v. State, 451 So. 2d 727 (Miss.1984); Johnson v. State, 452 So.2d 850 (Miss. 1984); Friday v, State, 462 So.2d 336 (Miss. 1985); Thomas v. State, 474 So.2d 604 (Miss. 1985). This demurrer was overruled.

On July 1, 1986, § 99-7-2 Miss. Code Ann. (Supp. 1986) went into effect. This statute states:

> 1. Two or more offenses which are triable in the same Court may be charged in the same indictment with a separate count for each offense if:
> (a) the offenses are based on the same act or transaction; or
> (b) the offenses are based on two or more acts or transactions connected together or constituting parts of a common scheme or plan.
> 2. Where two or more offenses are properly charged in separate counts of a single indictment, all such charges may be tried in a single proceeding.
> 3. When a defendant is convicted of two or more offenses charged in

separated counts of an indictment, the court shall impose separate sentences for such conviction.
4. The jury, or the Court in cases in which a jury is waived, shall return a separate verdict for each count of an indictment drawn under subsection (1) of this section.

A.

Ex Post Facto

Appellant argues that by allowing the multiple count indictment, the trial court applied § 99-7-2 in such a manner as to constitute an ex post facts law, in violation of the United States Constitution, Art. I, Sec. 10. Because our decision on the multi-count indictment is based upon existing case law, and not §99-7-2, we will not rule on this issue.

B.

The Multiple Indictment

Brown urges that the multiple count indictment results in multiple punishments growing out of the same set of operative facts, which constitutes reversible error, citing Stinson v. State, 443 So.2d 869 (Miss.

1983); Bennett v. State, 451 So.2d 727 (Miss. 1984); Johnson v. State, 452 So.2d 850 (Miss. 1984); Friday v. State, 462 So.2d 336 (Miss. 1985); Thomas v. State, 474 So.2d 604,605 (Miss. 1985). He further argues that certain evidence would have been inadmissible in separate trials, and that the cumulative effect of all of the evidence prejudiced his right to a fair trial. In support of this proposition, he cites Friday v. State, supra, in which this Court stated that consolidation where evidence of the crime would not be mutually admissible in separate trials destroyed the defendant's right to the presumption of innocence.

No case in the Stinson line held that it was error in and of itself for the State to obtain a multiple count indictment. It was the combination of the indictment with a trial on all counts that created error. Stinson did not create a per se rule that the multi-count indictment was error. Dixon v.

State, 465 So.2d 1092 (Miss. 1984) and Breckenridge v. State, 472 So.2d 373 (Miss. 1985).

As stated in Justice Robertson's special concurrence to Thomas v. State, 474 So.2d at 607, there is a great potential for mischief in allowing a multi-count indictment where the charges arise out of separate transactions or occurrences in that the jury may believe that the defendant is charged with so much that he must be guilty of something. However, as this Court held in Dixon and Breckenridge, there is no error when the crimes have the same elements of proof and arise from the same transactions or occurrences.

The holding in Friday v. State, supra, is based upon a recognition of the danger of prejudice to the defendant in allowing evidence inadmissible for one of the charged crimes but inadmissible for another.

In Friday v. State, supra, we held:

> Because of the inherent prospect of destroying a defendant's right to the presumption of innocence, Mississippi does not allow trial on separate charges to be consolidated where evidence of the crime would not be mutually admissible in separate trials and where the defendant is subject to receiving more than one sentence.

Examining the evidence introduced in Brown's trial, his actions toward the victims, M.B. and G.C., were clearly part of the same occurrences or schemes. The nude photographs, Playboy magazines, lesbian movies, and drugs and alcohol were methods by which Brown seduced the two victims. These events were part of the sexual battery. These same acts were relevant to the charges of contributing to the delinquency of a minor. Under Miss. Rules of Evidence Rule 404(b), other crimes or acts are admissible:

> (b) Other crimes, wrongs, or acts.
> Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes such

as proof of notice, opportunity, intent, preparation, plan, knowledge, identity, or absence of a mistake or accident.

See also, Whitlock v. State, 419 So.2d 200,203 (Miss. 1982); Carter v. State, 450 So.2d 67,69 (Miss. 1984); Neal v. State, 451 So.2d 743, 759 (Miss. 1984).

In Neal, this Court recognized that "... proof of another crime is admissible where the offense charged and that offered to be proved are so interrelated as to constitute a single transaction or occurrence or a closely related series of transactions or occurrences." 451 So. 2d at 743.

Because the multi-indictments arose from the same transactions or occurrences, and the evidence against Brown was admissible for each of the charged crimes, there was no error in allowing trial on the multi-count indictment.

IV.

WAS EVIDENCE OBTAINED IN VIOLATION OF BROWN'S CONSTITUTIONAL RIGHTS?

Evidence introduced at trial was obtained in three searches. Three separate search warrants were issued on October 17, 1985, March 14, 1986 and March 25, 1986. One affidavit was used for the issuance of all three warrants. Warrants two and tree were issued based on additional statements of victims. Brown asserts that because there was an improper return in the October search warrant, it was invalid and the evidence obtained was subject to suppression. Because evidence obtained in the October search was used to obtain the second and third warrants, these were also fatally defective. At a pre-trial hearing, the trial court overruled Brown's motion to suppress the evidence obtained in these searches.

Brown did not cite any authority supporting his argument, nor did he state how

he was prejudiced by the alleged flaws in the warrants.

This Court is under no obligation to consider this error without citation to authority. Clark v. State, 503 So.2d 277 (Miss. 1987); Kelly v. State, 463 So.2d 1070 (Miss. 1985); Redmon v. State, 457 So.2d 1344 (Miss. 1984). Appellant has a duty to support an assignment with authority, Shive v. State, 507 So.2d 898 (Miss. 1987); Pate v. State, 419 So.2d 1324 (Miss. 1982); an assignment of error lacking authority lacks persuasion on review. Smith v. State, 430 So.2d 406 (Miss. 1983).

However, in the interest of justice we will examine validity of the warrants and the issue of the "improper return."

The return and inventory of a search warrant subsequent to its execution is a ministerial act. Wince v. State, 206 Miss. 189, 39 So. 2d 882 (1949). This court in Wince adopted the rule stated in 56 C.J. p.

1246, Sec. 166 as follows:

> The failure of an officer to make a return of a search warrant properly issued and served will not invalidate the search warrant, or a search and seizure made thereunder, even where the statute requires the return within a certain time, the return being merely a ministerial act, which may be performed later. Thus the omission to make a full return is an irregularity that may be corrected on motion. Nor does such a search warrant become void because of an improper return, or error therein, but it may be amended to conform to the facts. 39 So.2d at 884.

The holding in Wince was followed in Cole v. State, 237 So.2d 443 (Miss. 1970 and Ward v. State, 461 So.2d 724 (Miss. 1984).

The officers conducting the searches, Detectives Thomas and Sollie, testified under oath concerning the affidavits and underlying circumstances of the issuance of the warrants. The search warrant of October, 1985, was issued based upon an affidavit and the testimony of Officer Thomas. His information was obtained by interviewing the victim, G.C. The second search warrant was supported by Officer Thomas' affidavit and

the statement of a second victim, M.B. The third warrant, which permitted the taking of blood and hair samples, was issued based upon Thomas' testimony as to what the observed in the second search.

We find that the evidence admitted at trial was not unconstitutionally obtained, there was ample probable cause to issue each of the three warrants, and no error was committed by the trial court.

V.

WAS BROWN DENIED HIS RIGHT TO A FAIR AND IMPARTIAL TRIAL DUE TO THE INTRODUCTION OF IMMATERIAL, IRRELEVANT, AND HIGHLY PREJUDICIAL EVIDENCE?

Brown argues that the combination of several instances of the introduction of incompetent or inflammatory evidence resulted in the denial of his right to a fair trial. McDonald v. State, 285 So.2d 177 (Miss. 1973). These instances were: a) the introduction of 80 Playboy magazines confiscated in a search of his home; b) testimony by both Detectives Sollie and

Thomas, indicating that there may have been other victims; c) the testimony of the State's witness J.B. which implicated the appellant in a sale of marijuana; and d) testimony about a lesbian film and the introduction of a film confiscated in the search.

On examining each issue raised by Brown, we find that he was not denied a fair trial.

When the Playboy magazines were introduced into evidence, the defense objected on the grounds that Brown's ownership had not been proven and it is not unlawful to possess these magazines. No relevancy objection was made to the introduction of the magazines, therefore Brown is barred from raising the matter here, Lucas v. State, 381 So.2d 140 (Miss. 1980); Jones v. State, 367 So.2d 458 (Miss. 1979); Pyron v. State, 349 So.2d 1063 (Miss. 1977). This Court confines itself to objections made in the trial court. Tubbs v. State, 402

So.2d 830 (Miss. 1981).

On cross-examination, Detectives Sollie and Thomas were asked what type of pictures they were searching for at the defendant's home. Each answered that they were looking for photos of "other victims." In each case, defense counsel objected to the answer and moved for a mistrial. The objections were sustained and the jury was instructed to disregard the answers. Defendant's motion for a mistrial was overruled in each case. Any impropriety in these responses was elicited in response to Brown's own questions, therefore he cannot complain of the answers. Gholar v. State, 203 Miss. 371, 35 So.2d 706 (1948).

A witness for the State testified that alcohol and marijuana were available at the Brown house and that Brown gave her money to purchase marijuana. Defense counsel's objection to any reference to the sale of marijuana as evidence of other crimes was

sustained by the court, and the jury was admonished to disregard. Therefore, prejudicial error does not result from that testimony. Shelby v. State, 402 So.2d 338 (Miss. 1981); Herron v. State, 287 So.2d 759, 766 (Miss. 1974)

It was not error to allow evidence of the consumption of marijuana since this evidence was relevant to the charge of contributing to the delinquency of a minor.

M.B. testified that she had seen a "lesbian film" at Brown's home; that a movie which was confiscated by Detectives Sollie and Thomas was the same movie. This movie was not played for the jury. Only the package and title were displayed when the film was introduced.

Detectives Thomas testified that the victims had identified the film. Defense objected on the basis of hearsay. This objection was overruled.

The court's decision to admit exhibits

into evidence is left to the discretion of the court. Carter v. State, 310 So.2d 271,273 (Miss. 1975); Gandy v. State, 373 So.2d 1042, 1047 (Miss. 1979). We find that no error was committed in allowing the introduction of the film into evidence.

In summary, in McDonald, this Court recognized that several instances of inflammatory and irrelevant material, taken as a whole, may result in a "fatally prejudicial" proceeding. 285 So.2d at 179. The case sub judice does not qualify as such a proceeding.

AFFIRMED.

ROY NOBLE LEE, C.J., HAWKINS AND DAN LEE, P.JJ., PRATHER, ROBERTSON, SULLIVAN, ANDERSON and ZUCCARO, JJ., CONCUR.

AMENDMENT IV OF THE UNITED STATES CONSTITUTION

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

APPENDIX "B"

AMENDMENT VI OF THE UNITED STATES CONSTITUTION

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defense.

AMENDMENT XIV TO THE UNITED STATES CONSTITUTION

SECTION 1: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

ARTICLE I, SECTION X

1. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.